

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ERIC NARINE,

Plaintiff,

- against -

ORDER

CV 07-657 (ERK)(MDG)

DAVE WEST INDIAN PRODUCTS CORP.,

Defendant.

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This order addresses the letter motion of plaintiff filed on March 20, 2008 (ct. doc. 32) to strike the defendant's answer and counterclaim because of the defendant's refusal to participate in depositions pending determination of its motion for my recusal. Ct. doc. 30.

I agree with plaintiff that there is no basis for recusal, as discussed in a separate order filed (ct. doc. 34), and that a party cannot unilaterally terminate discovery simply because of dissatisfaction with a court ruling. The depositions to be taken include the deposition of plaintiff, which was to be the first of four depositions scheduled beginning the week of March 17, 2008. I granted the plaintiff's request to adjourn his deposition by order electronically filed on March 17, 2008, the day before his deposition. That deposition will need to be rescheduled. While I do not approve of defendant's refusal to proceed, I find that the sanction of striking the answer and counterclaim too drastic

under the circumstances. However, defendant is warned that irrespective of whether it appeals my order denying its application for my recusal, it will be expected to participate fully and in good faith in completing the remaining discovery in this case. Sanctions will be imposed if it fails to do so.

The parties must exchange by April 4, 2008 a list of the dates between April 14 and May 14, 2008 that their clients are available for depositions.

A discovery conference will be held on April 15, 2008 at 12:00 p.m.

SO ORDERED.

Dated: Brooklyn, New York
March 28, 2000

/s/
MARILYN D. GO
U.S. MAGISTRATE JUDGE